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Roland K. Bowler II
Motorola, Inc.
Intellectual Property Section, Law Department
600 North U.S. Highway 45, AN475
Libertyville, IL 60048

EXAMINER

DANIEL JR, WILLIE J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL D. KOTZIN, LOUIS VANNATTA, and
HOWARD HOHN THOMAS

Appeal 2007-3058
Application 09/909,206
Technology Center 2600

Decided: August 11, 2008

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI, and JOHN A.
JEFFERY, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-13 and 15-20.¹ We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

INVENTION

Appellants' claimed invention is directed to selecting a communication service from among a plurality of communication service providers capable of providing communication services to a mobile communication device (Spec. 3:17-19). "The selected service is preferably one that best serves the user, and more particularly best, or optimally, serves the established communication objectives, for example by providing the least costly service or the fastest data transfer rate" (Spec. 3:21-24).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method in a mobile wireless communication device for dynamically selecting communication services from a plurality of service providers capable of providing communication services to the mobile wireless communication device, comprising:

establishing communication objectives at the device for corresponding communications to be executed by the device;

¹ Claim 14 has been canceled (Br. 2).

selecting one of the communication services for each communication to be executed by the device based on the corresponding established communication objectives;

utilizing the selected communication service at least for the communication whose communication objective formed the basis upon which the communication service was selected.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Spaur	US 6,516,192 B1	Feb. 04, 2003
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The following rejection is before us for review:

Claims 1-13 and 15-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Spaur.

ANTICIPATION

There are multiple anticipation issues before us regarding whether Appellants have shown that the Examiner erred in rejecting claims 1-13 and 15-20 under 35 U.S.C. § 102(b).²

Regarding claims 1-3 and 7-12

A. The first issue is whether the Examiner erred in determining that Spaur teaches a mobile wireless communication device selecting one of the

² We are addressing the arguments as set forth in the Supplemental Appeal Brief dated 12/21/2006.

communication services as claimed.

Regarding claims 4, 13, 15, and 17-19

B. The second issue is whether the Examiner erred in determining that Spaur teaches receiving service information from the plurality of service providers at the device as claimed.

Regarding claim 5

C. The third issue is whether the Examiner erred in determining that Spaur teaches querying the plurality of service providers for service information as claimed.

Regarding claim 6

D. The fourth issue is whether the Examiner erred in determining that Spaur teaches storing and updating service information received from the service providers at the device as claimed.

Regarding claims 16 and 20

E. The fifth issue is whether the Examiner erred in determining that Spaur teaches weighing the one or more identified characteristics as claimed.

FINDINGS OF FACT

The relevant facts include the following:

1. Spaur teaches a mobile unit “having the communications system 10” (col. 13, l. 13 and col. 13, ll. 50-51).
2. Spaur teaches that each of the terminal stack 12 and the network selection apparatus 14 is provided with the mobile unit (col. 5, ll. 40-42).

3. Spaur teaches that application requirements include economic factors, transfer rate parameters, and user inputs that can be dynamically generated during use and which affect channel selection (col. 5, ll. 60-65).
4. Spaur teaches that link database 54 contains information or data related to the operating parameters of the network channels 34a-34n (col. 9, ll. 64-65).
5. Spaur teaches that these parameters include coverage maps, pricing schedules that may be location and time dependent, and schedules of availability of network channels as well as dynamically obtained characteristics such as packet loss, packet latency, and signal strength (col. 9, l. 66-col. 10, l. 14).
6. Spaur teaches that link selector 64 can dynamically change the network channel based on changing communication or economic conditions (col. 10, ll. 36-40).
7. Spaur teaches that the link selector 64 checks or compares (i.e., queries) each application requirement with the corresponding parameter, for each such network channel (col. 10, ll. 63-66), in order to determine channel availability for selection (col. 11, ll. 8-11).
8. Spaur further teaches that the link selector 64 receives information regarding the operating parameters from link database 54 (col. 10, ll. 53-59).
9. Spaur teaches storing the operating parameters and dynamic characteristics associated with these parameters in database 54 (col. 9, l. 64-col. 10, l. 14).
10. Spaur teaches that the dynamic characteristics of the operating parameters are updated during use of the channel and subsequently stored in database 54 (col. 10, ll. 3-14).

11.Spaar teaches that the weighing vectors are obtained from the database 38 (col. 11, ll. 30-32) which is part of the communications system 10 (Fig. 1).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. Inc., v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

Initially, we note that although Appellants nominally argue claims 2, 3, 7, 8, and 9-15 separately (Br. 2-14), Appellants essentially reiterate the claim limitations and do not provide any substantive analysis or explanation as to how or why these limitations are not anticipated by Spaar. Simply pointing out what a claim requires with no attempt to point out how or why the claims patentably distinguish over the

prior art does not amount to a separate argument for patentability. 37 C.F.R. § 41.37(c)(1)(vii) (2004). *See also In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987). Thus, we only address the specific arguments presented, and we do not address Appellants' mere recitation of claim limitations which are without any corresponding argument.³

Regarding claims 1-3 and 7-12

A. Did the Examiner err in determining that Spaur teaches a mobile wireless communication device selecting one of the communication services as claimed?

Appellants argue that “Spaur is about the network making decisions for the mobile device. Claim 1 is about the mobile device making decisions for the mobile device” (Br. 5). Appellants state that “the communication system (10) of Spaur is a network infrastructure entity” and it is not a mobile wireless communication device (Br. 4). Appellants repeat the same argument for claims 2, 3 and 7-12 (Br. 5-10).

The Examiner responds:

Spaur discloses “. . .a mobile wireless communication device for dynamically selecting communication services from a plurality of service providers capable of providing communication services to the mobile wireless communication device . . .” (see col. 5, line 36-col. 6, line 19; col. 6, lines 52-67; col. 13, lines 13, 49-51; Figs. 1-4), where the mobile unit (10) includes the communication system (10) that has

³ Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed waived. See 37 C.F.R. § 41.37(c)(1)(vii) (2004).

a network selection apparatus (14) for selecting to communicate with different networks according to the services provided. The mobile unit (10) clearly includes the communication system (10) (see col. 5, lines 36-42; col. 13, lines 49-51; Fig. 1), where the mobile unit (10) can dynamically select communication services (e.g., channels or networks).

(Ans. 19-20).

We agree with the Examiner's findings of facts and conclusions as set out in the Answer and adopt them as our own. We add the following primarily for emphasis.

Spaur teaches a mobile unit "having the communications system 10" (Finding of Fact 1). Spaur further teaches that each of the terminal stack 12 and the network selection apparatus 14 is provided with the mobile unit (Finding of Fact 2). Spaur further teaches that application requirements include economic factors, transfer rate parameters, and user inputs that can be dynamically generated during use and which affect channel selection (Finding of Fact 3). Thus, Spaur teaches a mobile wireless communication device which includes the communications system (10) selecting one of the communication services (i.e., channel selection).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claims 1-3 and 7-12 because Spaur teaches a mobile wireless communication device which includes the communications system selecting one of the communication services (Findings of Fact 1-3).

Regarding claims 4, 13, 15, and 17-19

B. Did the Examiner err in determining that Spaur teaches receiving service information from the plurality of service providers at the device as claimed?

Appellants argue the following regarding claim 4:

Spaur does not receive service information from the provider at the wireless unit. In Spaur, the channel selection decision is made by the link selector (64) at the communication system (10) (network) based on the application requirements and information in the communication link database (54), which is also part of the communication system (10).

(Br. 6-7).

Appellants repeat the previous arguments for claims 13, 15, and 17-19

(Br. 10-14).

The Examiner asserts that Spaur discloses:

“...assess service information at the mobile unit . . .” (see col. 5, line 36 - col. 6, line 19; col. 6, lines 52-67; col. 13, lines 13, 49-51; Figs. 1-4), where the mobile unit (10) includes the communication system (10) that has a network selection apparatus (14) for selecting to communicate with different networks according to the services provided. The mobile unit (10) clearly includes the communication system (10) (see col. 5, lines 36-42; col. 13, lines 49-51; Fig. 1), where the mobile unit (10) can dynamically select communication services (e.g., channels or networks) by using the terminal stack (12) and network channel selection apparatus (14) (see col. 8, lines 11-14; col. 10, lines 36-40; Figs. 2B “ref. 144” and 3-4). In addition, the application module (18) provides application requirements (e.g., economic factors and transfer parameters) that can effect channel selection (see col. 5, lines 52-65; col. 6, lines 52-67; col. 10, lines 36-66; Figs. 2B-4).

(Ans. 20-21).

We agree with the Examiner's findings of facts and conclusions as set out in the Answer and adopt them as our own. We add the following primarily for emphasis.

Spaur teaches that link database 54 contains information or data related to the operating parameters of the network channels 34a-34n (Finding of Fact 4). Spaur teaches that these parameters include coverage maps, pricing schedules that may be location and time dependent, and schedules of availability of network channels as well as dynamically obtained characteristics such as packet loss, packet latency, and signal strength (Finding of Fact 5). In order to create database 54, the service information (i.e., operating parameters) must have been already received from the providers. As stated *supra* in section A of the analysis, the mobile device includes the communication system 10 (Findings of Fact 1-3) which in turn includes the database 54 (Fig. 1). Thus, it follows that Spaur teaches receiving service information (i.e., operating parameters) from the provider (i.e., required to create link database 54) at the wireless unit (i.e., link database 54) as claimed.

Thus, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 4, 13, 15, and 17-19 because Spaur teaches receiving service information from the provider at the wireless unit as claimed (Findings of Fact 1-5).

Regarding claim 5

C. Did the Examiner err in determining that Spaur teaches querying the plurality of service providers for service information as claimed?

Appellants state that there is no disclosure that the communication system 10 queries service providers for service information (Br. 7).

The Examiner states:

Spaur discloses . . . querying the plurality of service providers (inherent in Spaur as the originators of the communication services (i.e., channels)) for service information before receiving the service information (i.e., operating parameters) (see col. 9, lines 25-42; col. 10, lines 15-40; col. 5, line 40 - col. 6, line 19; col. 6, lines 52-67; Figs. 2-4), where the user interactivity can selectively choose the services of the different networks in which the before receiving would be inherent as the status of the network information can change or be updated based on the latest results. The network channel selection apparatus 14 also includes a link controller/monitor 50 that is operatively connected to the network interfaces 30 for receiving information therefrom and making requests thereto. In particular, the link controller/monitor 50 takes responsibility for the control and status of the network channels 34a-34n (i.e., communication services).

(Ans. 7).

We agree with the Examiner's findings of facts and conclusions as set out in the Answer and adopt them as our own.

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 5 because Spaur teaches receiving service information from the provider at the wireless unit (*see supra* Findings of Fact 1-3 and analysis under section A) which must have been the result of querying the service providers at some point in time in order to create database 54. Note that the claims are silent as to when this querying occurred.

Furthermore, Spaur teaches that link selector 64 can dynamically change the network channel based on changing communication or economic conditions (Finding of Fact 6). Spaur teaches that the link selector 64 checks or compares (i.e., queries) each application requirement with the corresponding parameter for each such network channel to determine channel availability for selection (Finding of Fact 7). Spaur further teaches that the link selector 64 receives information regarding the operating parameters from link database 54 (Finding of Fact 8). Thus, it follows that the link selector 64 queries (i.e., via checking or comparing) the channel networks and receives such information from link database 54 (Findings of Fact 7-8) prior to deciding channel availability (Finding of Fact 7). Note that the claims are silent as to whether the querying occurs in real time or whether querying occurs via using stored network channel information (i.e., via database 54).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 5 because Spaur teaches querying the plurality of service providers for service information (Findings of Fact 6-8).

Regarding claim 6

D. Did the Examiner err in determining that Spaur teaches storing and updating service information received from the service providers at the device as claimed?

Appellants argue that there is no disclosure in Spaur that the mobile unit stores and updates service information (Br. 7).

The Examiner states:

Spaur discloses . . . storing service information (i.e., operating parameters) received from the service providers (inherent in Spaur as the originators of the communication services (i.e., channels)) at the device (10), updating service information (i.e., operating parameters) at the device (10) (see col. 9, line 55 - col. 10, line 2; col. 10, lines 3-14), where the link controller/monitor 50 has access to communication link database 54. The results of any such monitoring process are stored in the communication link database 54. This database 54 also contains information or data related to the operating parameters (i.e., service information) of the network channels 34a-34n (i.e., communication services). These include, for example, coverage maps, pricing schedules that may be location and time dependent, schedules of availability of network channels, estimated transfer error rates and the type of channel monitoring to be conducted. The network channels 34a - 34n (i.e., communication services) also have dynamic characteristics or properties associated therewith. That is, during use or operation of a particular network channel, certain parameters (i.e., service information) can be checked to determine whether or not each is meeting its expected operating function. For example, retransmit requests per packet (packet loss), round trip packet travel time (packet latency), variation in inter-packet travel time (packet jitter), and signal strength are measured. The results of such measurements are maintained in the communication link database 54.

(Ans. 8).

We agree with the Examiner's findings of facts and conclusions as set out in the Answer and adopt them as our own. We add the following primarily for emphasis.

Spaur teaches storing the operating parameters and dynamic characteristics associated with these parameters in database 54 (Finding of Fact 9). Furthermore, Spaur teaches that the dynamic characteristics of the operating parameters are updated during use of the channel and subsequently stored in database 54 (Finding

of Fact 10). Thus, Spaur teaches storing and updating service information received from the service providers (Findings of Fact 9-10).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 6 because Spaur teaches storing and updating service information received from the service providers (Findings of Fact 9-10).

Regarding claims 16 and 20

E. Did the Examiner err in determining that Spaur teaches weighing the one or more identified characteristics as claimed?

Appellants argue that "Spaur performs any weighting at the network, not at the mobile unit" (Br. 12). Appellants repeat the same argument for claim 20 (Br. 14).

The Examiner states:

Spaur discloses . . . weighting the one or more identified characteristics (i.e., requirements or factors) of the communication to be executed (see col. 11, line 27 - line 32; Figs. 2B and 4), where establishing communication objectives (i.e., applications) by weighting at least one characteristic (i.e., requirement or factor) for each communication to be executed, as disclosed by, at step 128, the associated weighting vector for each such requirement (i.e., characteristic or factor) for application A is obtained. For example, the associated weighting vector for the bandwidth application requirement (or factor) is 0.25. Each such weighting vector for application A requirements is obtained from the application requirements database 38.

(Ans. 14-15).

We agree with the Examiner's findings of facts and conclusions as set out in the Answer and adopt them as our own. We add the following primarily for emphasis.

Spaur teaches that the weighing vectors are obtained from the database 38 which is part of the communications system 10 (Finding of Fact 11). Communications system 10 is part of the mobile unit as we determined *supra* (see analysis under section A and Findings of Fact 1-3). Thus, Spaur teaches weighing the one or more identified characteristics at the mobile unit (Findings of Fact 1-3 and 11).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claims 16 and 20 because Spaur teaches weighing the one or more identified characteristics (Findings of Fact 1-3 and 11).

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-13 and 15-20 under 35 U.S.C. § 102(b).

ORDER

The decision of the Examiner to reject claims 1-13 and 15-20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2007-3058
Application 09/909,206

AFFIRMED

APJ Initials:

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ROLAND K. BOWLER II
MOTOROLA, INC.
INTELLECTUAL PROPERTY SECTION, LAW DEPARTMENT
600 NORTH U.S. HIGHWAY 45, AN475
LIBERTYVILLE, IL 60048